

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

JOHN SHEK,

Plaintiff,

No. C 10-4031 PJH

v.

**ORDER**

CALIFORNIA NURSES ASSOCIATION/  
C.H.E.U.,

Defendants.

On November 10, 2010, the court granted defendants' motion to dismiss the above-entitled action, finding that plaintiffs' claims were barred by the doctrine of res judicata. See November 10, 2010 Order at 4. Also on November 10, 2010, the court entered judgment. On November 19, 2010, plaintiff filed a "motion to stay execution of judgment pending appeal," pursuant to Federal Rule of Civil Procedure 60(b).

Rule 60(b) does not provide authority for "stay[ing] execution of judgment." Rather, it permits a party to seek relief from a final judgment or order, where the party can show (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence; (3) fraud; (4) that the judgment is void; (5) that the judgment has been satisfied, released, or discharged; or (6) any other reason that justifies relief. Here, plaintiff has not established that any of these factors applies. He argues that the court applied the wrong statute of limitations to his claim, but the court dismissed the complaint because it was barred by res judicata, not because it was time-barred.

1 As for plaintiff's request for a stay pending appeal, the standard is similar to the  
2 standard for a motion for a preliminary injunction. Hilton v. Braunskill, 481 U.S. 770, 776-  
3 78 (1987). The factors regulating issuance of a stay include (1) whether the stay applicant  
4 has made a strong showing that he is likely to succeed on the merits; (2) whether the  
5 applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will  
6 substantially injure the other parties interested in the proceeding; and (4) where the public  
7 interest lies. Id. Plaintiff has not established that a stay is warranted under this standard.

8 Accordingly, plaintiff's motion is DENIED.

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10 **IT IS SO ORDERED.**

11 Dated: November 22, 2010



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13 PHYLLIS J. HAMILTON  
14 United States District Judge  
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